

May 13, 2016

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2016 MAY 23 AM 11: 03

Daniel A. Petalas, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

OFFICE OF GENERAL COUNSEL
MUR # 7072

Re: Complaint Filed Against Ami Bera, Ami Bera for Congress, and Jennifer May

Dear Mr. Petalas:

This Complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.4 as a result of the facts recently made public in the federal criminal case of *United States v. Bera*, No. 2:16-CR-00097-TLN (E.D. Cal. 2016). Upon information and belief, Ami Bera, Ami Bera for Congress (C00461061), and Jennifer May (the "Respondents") failed to timely and properly refund, disgorge, or otherwise distribute over \$270,000 in illegal campaign contributions received through a massive money-laundering scheme orchestrated by the Bera family.

As the Plea Agreement and Information of Babulal Bera make clear, the Respondents received over \$270,000 in illegal contributions. (*attached as Exhibit A and Exhibit B*). The Respondents became aware of the existence of the illegal contributions in October 2015,¹ well in advance of thirty (30) days before the Bera campaign claims to have "redirected the money to the U.S. Treasury."² It is beyond reason that Respondents were aware of the illegality of this massive money-laundering scheme fewer than thirty (30) days before redirecting funds to the U.S. Treasury.

Pursuant to 11 C.F.R. § 103.3, Respondents were obligated to refund these illegal contributions to their source within thirty (30) days of learning of their illegality. However, at least six (6) full months passed between the time that the Bera campaign became aware of the illegal money-laundering scheme and the time when the campaign sent funds to the U.S. Treasury. Further, the Bera campaign failed to refund the ill-gotten funds to their source. The Commission is therefore compelled to investigate both the timeliness and the method of the Bera campaign's disbursement of these funds.

¹ See notes 7 and 10 and accompanying text.

² Christopher Cadelago, *Babulal Bera's felonies complicate Ami Bera's re-election effort*, SACRAMENTO BEE (May 10, 2016 6:01 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article76868662.html>

I. FACTS

Ami Bera and Ami Bera for Congress received over \$270,000 in illegal contributions through a massive money laundering scheme orchestrated and executed by the Bera family for the purpose of funneling hundreds of thousands of dollars to Ami Bera's campaign.³ Ami Bera's father, Babalul Bera, made these illegal contributions through roughly 90 straw donors, using corporate funds from his business and individual funds that far exceeded his individual contribution limit.⁴ Reportedly, Ami Bera's mother also was involved in the money-laundering scheme but was not prosecuted in the Prosecutor's discretion as a result of Babulal Bera's guilty plea.⁵

The Bera Plea Agreement and Information filed in *United States v. Bera* make clear that the Bera money-laundering scheme funneled over \$270,000 to the Bera campaign beginning as early as 2009. The Bera campaign reportedly distributed some amount of the illegal funds to the U.S. Treasury around the time of the Bera Plea Agreement on May 10, 2016.⁶ However, Ami Bera admits that he was interviewed as a part of the investigation of this scheme in October 2015.⁷ There is no indication that the Respondents made any effort to refund the illegal contributions to their source.

Rather than rid his campaign of illegal funds that exceeded \$270,000, Bera chose to make at least \$240,000 in expenditures between November 1, 2015 and March 31, 2016.⁸ The campaign has certainly made additional expenditures that have not yet been publicly reported. Such expenses presumably include legal fees. To date during this election cycle, the Bera campaign has reported spending a total of \$2,760 on legal fees.⁹ That entire sum was spent by

³ See Exhibit A and Exhibit B.

⁴ See Exhibit A and Exhibit B.

⁵ See Denny Walsh, *Rep. Ami Bera's father pleads guilty to election fraud*, SACRAMENTO BEE (May 10, 2016 12:49 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article76780417.html> ("Talbert said that as part of the plea bargain the government agreed not to charge Babulal Bera's wife:").

⁶ Denny Walsh, *Rep. Ami Bera's father pleads guilty to election fraud*, SACRAMENTO BEE (May 10, 2016 12:49 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article76780417.html>.

⁷ Ali Wolf, *Congress Ami Bera Reacts After His Father Pleads Guilty to Election Fraud Charges*, KTXL FOX40.COM (May 10, 2016 6:01 PM), <http://fox40.com/2016/05/10/congressman-ami-bera-reacts-after-his-father-pleads-guilty-to-election-fraud-charges/> ("By phone, Congressman Ami Bera told FOX40 he found out about the investigation in October [2015]."). See also *NBC Nightly News with Lester Holt* (KCRA-SAC NBC television broadcast May 10, 2016), available at <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=10d260d8-b52b-417b-82ab-51a851f08b64> ("I first learned about it in October [2015]. Investigators came, [sic] we cooperated with investigators.").

⁸ Bera for Congress Year End Report, filed ; Bera for Congress 2016 April Quarterly Report, filed

⁹ <http://doquery.fec.gov/cgi-bin/fecimg/?15970361586>.

March 2015, well before federal authorities began interviews in October 2015 regarding the money-laundering scheme. Somehow the campaign has not reported incurring any legal fees at all since October 2015.

The fact that the campaign has apparently not incurred any legal fees since being contacted about a criminal investigation of illegal funds being funneled to the campaign is extremely unlikely. Further, the lack of any payments to legal counsel stands in direct contrast to Bera's repeated assertions that he declined to speak with his father after October 2015 as a result of guidance received from legal counsel.

II. ANALYSIS

Pursuant to 11 C.F.R. § 103.3, the Campaign was required to refund all illegal funds to the actual contributor within thirty (30) days.

(b) The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.

(2) If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives.

11 CFR 103.3(b)(2).

While Bera claims he "immediately took steps to return the full dollar amount to the U.S. Treasury,"¹⁰ more than six (6) full months passed from the time that Bera became aware of the

¹⁰ Sarah Heise, *Rep. Ami Bera's father admits to violating campaign finance rules*, KCRA3 (May 10, 2016 1:13 PM), <http://www.kcra.com/news/local-news/news-sacramento/feds-rep-ami-beras-father-violated-campaign-finance-rules/39469764>.

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illegal money-laundering scheme in October 2015¹¹ and the time when his campaign sent some undisclosed and unverified amount of campaign funds to the U.S. Treasury.¹² The Bera Plea Agreement states: "With respect to the 2010 and 2012 elections, the government has identified over 130 improper campaign contributions involving approximately 90 contributors." **Exhibit B** at Factual Basis for Pleas (emphases added). Bera's claim that he was not aware of the illegality of this massive money laundering scheme involving his mother, father, relatives, and community members is plainly offense to logic.

Even if Bera were in fact so blind to this multi-election cycle criminal conduct within his own family that he avoided learning of it until he was questioned by federal investigators in October 2015, Bera admits his knowledge of the illegal scheme at that time.¹³ As a result, he was required by law to refund the ill-gotten gains within thirty (30) days.¹⁴ However, Bera continued this failure to comply for the next six (6) months until his father's guilty plea became public; at which time, he magnanimously diverted at least some of the funds to the U.S. Treasury. Due to Bera's decision to avoid compliance with regulations, he was able to float his Congressional campaign for more than a quarter of an election year by making at least \$240,000 in campaign expenditures according to reports filed with the Commission.

In addition to being untimely, Bera failed to properly *refund* the illegal contributions. As noted above, 11 C.F.R. § 103.3(b)(2) states plainly that the campaign "shall refund the contribution to the contributor . . ." (emphasis added). The Court of Federal Claims recognizes the "donor's guaranteed interest in the money. . ." ¹⁵ and made clear that a donor, despite his or her wrongdoing, is "*entitled to a refund*"¹⁶ and that 11 C.F.R. § 103.3(b)(2) "confers a *right* of

¹¹ See note 7 and accompanying text.

¹² John Myers, 'I have, in fact, done the crime': Rep. Ami Bera's father admits illegal campaign contributions, L.A. TIMES (May 10, 2016 5:30 PM), <http://www.latimes.com/politics/la-pol-sac-ami-bera-father-campaign-money-20160510-story.html>. Because Bera has yet refused to disclose the exact dollar amount of any check submitted to the U.S. Treasury, it is unclear whether Bera has rid his campaign of the full amount of illegal funds or if he continues to harbor other laundered money.

¹³ See notes 7 and 10 and accompanying text.

¹⁴ 11 C.F.R. § 103.3(b)(2).

¹⁵ *Fireman v. United States*, 44 Fed. Cl. 528, 537-38 (1999) ("In changing its interpretation of 11 C.F.R. § 103.3(b)(2), the FEC has taken away the absolute quality of the donors' right for repayment if their contribution is rejected. Under the new interpretation, the FEC empowered the campaign to select an entity other than the donors, namely the United States Treasury, to receive the disgorged funds. The donors' guaranteed interest in the return of the money has been eliminated. The donors may not want their disgorged campaign contributions to be sent to the United States Treasury, but the donors have no control over whether the money is given to the Treasury or them. The compulsion is over the Plaintiffs' right (or lack thereof) to control where the money winds up after disgorgement.") (emphases added).

¹⁶ *Fireman*, 44 Fed. Cl. at 539 (emphasis added).

recovery”¹⁷ on a donor who made illegal contributions. The Court further expressed its concern that the effect of the Commission’s 1996 Advisory Opinion (Kim)¹⁸ is that the “donor’s guaranteed interest in the money has been eliminated.” Until 1996, the Commission read 11 C.F.R. § 103.3(b)(2) exactly as it is written.¹⁹

Although the Commission has previously instructed campaigns in receipt of illegal contributions that they may choose to give those funds to the U.S. Treasury, that guidance disregards the donor’s “guaranteed interest in the money.”²⁰ It is without dispute that, by October 2015, Bera was aware that his father’s money was fueling an illegal money-laundering scheme to funnel contributions to his campaign.²¹ However, Bera has failed to refund *any* funds to his father, the contributor of the illegal funds, let alone the full \$270,000 in illegal funds that supported and flowed through his campaign account for years as the campaign made substantial expenditures in one of the most expensive Congressional races in the country in 2014.²²

III. CONCLUSION

Upon information and belief, Ami Bera, Bera for Congress, and Jennifer May failed to timely and properly distribute over \$270,000 in campaign contributions made in furtherance of a massive money-laundering scheme orchestrated by the Bera family. Given the scope of the scheme and the close family relationship of its perpetrators to the campaign, Bera knew or should have known of the illegal conduct well in advance of October 2015. Even if Bera

¹⁷ *Id.*

¹⁸ FEC Advisory Op. 1996-05 (Kim).

¹⁹ Until 1996, the FEC interpreted 11 C.F.R. § 103.3(b)(2) exactly as written to require political committee treasurers to return illegal contributions to the *actual* contributor within thirty (30) days of discovery of the illegality.

“[A]mounts equal to the unlawful contributions received by your committee are required to be returned. . . . [T]he refunds should be made *immediately* upon receiving this opinion. . . . The refunds should be made *to the corporation* that was the source [T]he employees’ personal funds were not reduced as a result of this scheme. Accordingly, they should not receive refunds from your committee.”

FEC Advisory Op. 1984-52 at 3 (Russo) (emphases added). See also FEC Advisory Op. 1989-05 at 2 (Ray) (“In light of 11 C.F.R. § 103.3(b)(2) and Advisory Opinion 1984-52, the Commission concludes that your committee must refund the illegal contribution to the corporation that was its source, Sperry/Unisys.”) (emphasis added).

²⁰ *Fireman*, 44 Fed. Cl. at 537-38.

²¹ See notes 7 and 10 and accompanying text.

²² Chris Good, *Check Out the Most Expensive House and Senate Races*, ABC News (Oct. 30, 2014 11:08 AM), <http://abcnews.go.com/Politics/check-expensive-house-senate-races/story?id=26572215> (describing Bera’s 2014 campaign as the nation’s most expensive campaign for the U.S. House of Representatives, besting even former Speaker of the House John Boehner’s costly 2014 re-election campaign).

somehow only became aware of the scheme in October 2015 upon being questioned by investigators, he failed to refund the ill-gotten contributions for six (6) months while he made over \$240,000 in campaign expenditures.

Complainant respectfully requests that the Commission promptly and fully investigate this matter, and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information, and belief.

Respectfully submitted,

Levi Van Hammeveld

Sworn to and subscribed before me this 16 day of May, 2016.

[Signature]

Notary Public

My Commission Expires: Feb. 16, 2019
See attached for seal.

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

Subscribed and sworn to (or affirmed) before me on this 16
day of May, 2016, by Lori Vanhamersveld

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in cursive script, appearing to read "Susan Romanishin", written over a horizontal line.

Re: Complaint Filed Against Ami Bera,
Ami Bera for Congress & Jennifer May.

1 PHILLIP A. TALBERT
Acting United States Attorney
2 JOHN K. VINCENT
PHILIP A. FERRARI
3 Assistant United States Attorneys
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900

6 RAYMOND HULSER
Chief, Public Integrity Section
7 RICHARD B. EVANS
Trial Attorney
8 United States Department of Justice
1400 New York Ave. NW, Suite 12100
9 Washington, DC 20005
Telephone: (202)353-7760

10 Attorneys for Plaintiff
11 United States of America

12 IN THE UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 BABULAL BERA,

19 Defendant.
20

CASE NO. 2:16 - CR - 0097 TLN

52 U.S.C. § 30116 (a)(1)(A) – Making Excessive
Campaign Contributions; 52 U.S.C. § 30122 –
Making Contributions in the Name of Another

21 INFORMATION
22

23 COUNT ONE: [52 U.S.C. §§ 30116(a)(1)(A) and 30109(d)(1)(A)(i) – Making Excessive Campaign
Contributions]

24 The United States Attorney charges:

25 BABULAL BERA,

26 Defendant herein, as follows:

27 INTRODUCTION

28 At all times relevant to this Information:

FILED

MAY 09 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *Jms*
DEPUTY CLERK

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1 1. Federal Office Candidate 1 was a candidate for a seat in the United States Congress in
2 elections held in the years 2010 and 2012.

3 2. Committee A was the federal campaign committee formed to receive campaign
4 contributions for the election of Federal Office Candidate 1. Committee A was located in Elk Grove,
5 California, and maintained a mailing address at Post Office Box 582496, Elk Grove, CA 95758.

6 3. The Federal Election Campaign Act of 1971, as amended, Title 52, United States Code,
7 Sections 30101 through 30145 ("Election Act"), regulated financial activity intended to influence the
8 election of candidates for federal office. In order to limit the influence that any one person could have
9 on the outcome of a federal election, the Election Act established limits on the amounts individuals
10 could contribute to an individual candidate's political campaign committee. The Federal Election
11 Commission ("FEC") was an agency and department of the United States with jurisdiction to enforce the
12 limits and prohibitions of the Election Act.

13 4. Pursuant to the Election Act, the FEC required campaign committees, including
14 Committee A, to file periodic reports of receipts and disbursements, identifying, among other things,
15 each person who made a contribution to such committee during the relevant reporting period whose
16 contribution or contributions had an aggregate amount or value in excess of \$200 within the calendar
17 year, together with the date and the amount of any such contribution. In preparing these reports, federal
18 candidates and political committees relied on the information provided by the donor, including the
19 individual's name, address, and occupation. These periodic reports, which were filed with the FEC and
20 made publicly available, were intended to provide citizens with a transparent record of contributions to
21 candidates for federal office.

22 5. In 2009, the Election Act limited both primary and general election campaign
23 contributions to \$2,400, for a total of \$4,800 from any individual to any one candidate. In 2011, the
24 Election Act limited both primary and general election campaign contributions to \$2,500, for a total of
25 \$5,000 from any individual to any one candidate.

26 6. On or about April 4, 2009, and May 4, 2009, defendant and his spouse each made
27 contributions totaling \$4,800 to Committee A thereby reaching their individual contribution limits
28 allowed by the Election Act to Committee A for the 2010 election.

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1 7. Beginning on a date no later than May 11, 2009, and continuing through at least July 4,
2 2010, the defendant directly and indirectly solicited relatives, friends, and acquaintances to make the
3 maximum allowable federal campaign contributions to Committee A, knowing that his personal money
4 would be used to advance funds to, or reimburse these individuals for the contributions they made.

5 8. Beginning on a date no later than May 11, 2009, and continuing through at least August
6 20, 2010, these individuals contributed a total of at least \$225,326 to Committee A. In some instances,
7 these contributors mailed their contributions directly to Committee A in Elk Grove, California.

8 9. Beginning on a date no later than May 11, 2009, and continuing through at least July 4,
9 2010, these contributors received full or partial reimbursements for their contributions in the form of
10 funds that originated from the defendant, either from the defendant directly or through third parties
11 working at the defendant's behest.

12 10. On or about January 5, 2011, defendant and his spouse each contributed \$5,000 to
13 Committee A thereby reaching their individual contribution limits allowed by the Election Act to
14 Committee A for the 2012 election.

15 11. Beginning on a date no later than January 31, 2011, and continuing through at least
16 November 14, 2011, the defendant directly and indirectly solicited relatives, friends and acquaintances
17 to make the maximum allowable federal campaign contributions to Committee A, knowing that his
18 personal money would be used to advance funds to, or reimburse these individuals for the contributions
19 they made.

20 12. Beginning on a date no later than January 31, 2011, and continuing through at least
21 December 5, 2011, these individuals contributed a total of approximately \$43,400 to Committee A. In
22 some instances, these contributors mailed their contributions directly to Committee A in Elk Grove,
23 California.

24 13. Beginning on a date no later than April 26, 2011, and continuing through at least June 9,
25 2012, these contributors received full or partial reimbursements for their contributions in the form of
26 funds that originated from the defendant, either from the defendant directly or through third parties
27 working at the defendant's behest.

28 ///

THE CHARGE

14. The United States Attorney incorporates paragraphs 1 through 13 of this Information, as if set forth fully herein.

15. Beginning on or about January 5, 2011, and continuing through at least December 5, 2011, in the State and Eastern District of California and elsewhere, defendant BABULAL BERA did knowingly and willfully make, and cause to be made, contributions to Committee A, the official federal campaign committee of Federal Office Candidate 1, a candidate for a seat in the United States Congress, which contributions exceeded the limitations contained in the Election Act, and which violation aggregated \$25,000 and more during the 2011 calendar year, all in violation of Title 52, United States Code, Sections 30116(a)(1)(A) and 30109(d)(1)(A)(i).

COUNT TWO: [52 U.S.C. §§ 30122 and 30109(d)(1)(D) – Making Contributions in the Name of Another]

The United States Attorney further charges:

BABULAL BERA,

Defendant herein, as follows:

16. The United States Attorney incorporates paragraphs 1 through 13 of this Information, as if set forth fully herein.

17. Beginning on or about January 31, 2011, and continuing through at least December 5, 2011, in the State and Eastern District of California and elsewhere, defendant BABULAL BERA did knowingly and willfully make, and cause to be made, contributions of money, aggregating \$25,000 and more during the 2011 calendar year, in the names of others, to Committee A, the official federal campaign committee of Federal Office Candidate 1, a candidate for a seat in the United States Congress, all in violation of Title 52, United States Code, Sections 30122 and 30109(d)(1)(D).

Dated: May 6, 2016

PHILLIP A. TALBERT
Acting United States Attorney

By:


JOHN K. VINCENT
Assistant United States Attorney

United States v. Bera
Penalties for Information

COUNT 1:

VIOLATION: 52 U.S.C. § 30116(a)(1)(A) – Making Excessive Campaign Contributions

PENALTIES: Up to 5 years in prison; or
Fine of up to \$250,000; or both fine and imprisonment
Supervised release of up to 3 years

SPECIAL ASSESSMENT: \$100 (mandatory on each count)

COUNT 2:

VIOLATION: 52 U.S.C. § 30122 – Making Contributions in the Name of Another

PENALTIES: Up to 5 years in prison; or
Fine in an amount of not less than 300 percent of the amount involved in the violation, and not more than the greater of either \$50,000 or 1,000 percent of the amount involved in the violation; or both fine and imprisonment
Supervised release of up to 3 years

SPECIAL ASSESSMENT: \$100 (mandatory on each count)

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1 BENJAMIN B. WAGNER
United States Attorney
2 JOHN K. VINCENT
PHILIP A. FERRARI
3 Assistant United States Attorneys
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900

6 RAYMOND HULSER
Chief, Public Integrity Section
7 RICHARD B. EVANS
Trial Attorney
8 United States Department of Justice
1400 New York Ave. NW, Suite 12100
9 Washington, DC 20005
Telephone: (202) 353-7760

10 Attorneys for Plaintiff
11 United States of America

12 IN THE UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,
16 Plaintiff,

17 v.

18 BABULAL BERA,
19 Defendant.
20

CASE NO. CR-S-16-0097 TLN
[Enter case number]

PLEA AGREEMENT

DATE: TBD
TIME: TBD
COURT: Hon. Choose An Item.

21
22 I. INTRODUCTION

23 A. Scope of Agreement.


24 The information in this case charges the defendant with violations of 52 U.S.C. § 30116(a)(1)(A)
25 – Making Excessive Campaign Contributions; and 52 U.S.C. § 30122 – Making Contributions in the
26 Name of Another. This document contains the complete plea agreement between the United States
27 Attorney's Office for the Eastern District of California and the Public Integrity Section, Criminal
28 Division, United States Department of Justice (collectively the "United States" or "government") and

PLEA AGREEMENT

FILED

MAY 10 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY  DEPUTY CLERK

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1 the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office
2 for the Eastern District of California and the Public Integrity Section, Criminal Division, United States
3 Department of Justice and cannot bind any other federal, state, or local prosecuting, administrative, or
4 regulatory authorities.

5 **B. Court Not a Party.**

6 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
7 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
8 concerning the criminal activities of defendant, including activities which may not have been charged in
9 the information. The Court is under no obligation to accept any recommendations made by the
10 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
11 including the statutory maximum stated in this plea agreement.

12 If the Court should impose any sentence up to the maximum established by the statute, the
13 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
14 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
15 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
16 receive.

17 **II. DEFENDANT'S OBLIGATIONS**

18 **A. Guilty Plea.**

19 The defendant will plead guilty to Counts One and Two, charging Making Excessive Campaign
20 Contributions in violation of 52 U.S.C. § 30116(a)(1)(A) and Making Contributions in the Name of
21 Another in violation of 52 U.S.C. § 30122, respectively. The defendant agrees that he is in fact guilty of
22 these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are
23 accurate.

24 The defendant agrees that this plea agreement will be filed with the Court and become a part of
25 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
26 pleas should the Court not follow the government's sentencing recommendations.

27 The defendant agrees that the statements made by him in signing this Agreement, including the
28 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by

1 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
2 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
3 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
4 Agreement generally.

5 1. Waiver of Indictment:

6 The defendant acknowledges that under the United States Constitution he is entitled to be
7 indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed.R.Crim.P.
8 7(b) he agrees to waive any and all rights he has to being prosecuted by way of indictment to the charges
9 set forth in the information. The defendant agrees that at a time set by the Court, he will sign a written
10 waiver of prosecution by Indictment and consent to proceed by Information rather than by Indictment.

11 B. Fine.

12 The defendant agrees to pay a statutorily authorized criminal fine as ordered by the Court.

13 C. Special Assessment.

14 The defendant agrees to pay a special assessment of \$200 at the time of sentencing by delivering
15 a check or money order payable to the United States District Court to the United States Probation Office
16 immediately before the sentencing hearing. The defendant understands that this plea agreement is
17 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

18 D. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.

19 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
20 his plea, this plea agreement is voidable at the option of the government. If the government elects to
21 void the agreement based on the defendant's violation, the government will no longer be bound by its
22 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
23 forth herein. A defendant violates the plea agreement by committing any crime or providing or
24 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
25 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
26 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
27 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
28 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)

1 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
2 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
3 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
4 any federal criminal violation of which the government has knowledge. The decision to pursue any or
5 all of these options is solely in the discretion of the United States Attorney's Office.

6 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
7 defenses that the defendant might have to the government's decision. Any prosecutions that are not
8 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
9 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
10 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
11 The defendant agrees not to raise any objections based on the passage of time with respect to such
12 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
13 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
14 of the date of this plea agreement. The determination of whether the defendant has violated the plea
15 agreement will be under a probable cause standard.

16 In addition, (1) all statements made by the defendant to the government or other designated law
17 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
18 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
19 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
20 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
21 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
22 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
23 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

24 **E. Asset Disclosure.**

25 The defendant agrees to make a full and complete disclosure of his assets and financial
26 condition, and will complete the United States Attorney's Office's "Authorization to Release
27 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
28 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order

1 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
2 documentation to the United States Attorney's office within the allotted time, he will be considered in
3 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.D
4 above.

5 **III. THE GOVERNMENT'S OBLIGATIONS**

6 **A. Recommendations.**

7 **1. Incarceration Range.**

8 The government agrees that any sentence of incarceration that it recommends to the Court will
9 be for a term of 30 months or less.

10 **2. Acceptance of Responsibility.**

11 The government will recommend a two-level reduction (if the offense level is less than 16) or a
12 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
13 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
14 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
15 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
16 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G. § 3C1.1, either in the
17 preparation of the pre-sentence report or during the sentencing proceeding.

18 **B. Use of Information for Sentencing.**

19 The government is free to provide full and accurate information to the Court and Probation,
20 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
21 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
22 understands and agrees that nothing in this Plea Agreement bars the government from defending on
23 appeal or collateral review any sentence that the Court may impose.

24 **C. Further Prosecutions.**

25 If the court accepts the defendant's plea of guilty and the defendant fulfills each of the terms and
26 conditions of this agreement, the United States agrees that it will not further prosecute the defendant for
27 any crimes described in the attached Factual Basis or for any conduct of the defendant now known to the
28 United States and to the law enforcement agents working with the United States on the present

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1 investigation. In addition, the government previously informed the defendant that it did not intend to
2 prosecute the defendant's wife, Kanta Bera. The United States hereby affirms that and agrees that it will
3 not prosecute Kanta Bera for any crimes described in the attached Factual Basis or for any conduct of
4 Kanta Bera now known to the United States and to the law enforcement agents working with the United
5 States on the present investigation. Nothing in this agreement is intended to provide any limitation of
6 liability arising out of any acts of violence.

7 **IV. ELEMENTS OF THE OFFENSE**

8 At a trial, the government would have to prove beyond a reasonable doubt the following
9 elements of the offenses to which the defendant is pleading guilty, Making Excessive Campaign
10 Contributions in violation of 52 U.S.C. § 30116(a)(1)(A), and Making Contributions in the Name of
11 Another, in violation of 52 U.S.C. § 30122. To establish a violation of § 30116(a)(1)(A), the
12 government must prove:

13 First, the defendant knowingly and willfully made a financial contribution or contributions to a
14 candidate or the candidate's authorized political committees;

15 Second, the contributions were made with respect to an election for a federal office being sought
16 by the candidate; and

17 Third, the total contribution or contributions made over the course of one calendar year exceeded
18 the limit set for that calendar year under the Federal Election Campaign Act.

19 To establish a violation of § 30122, the government must prove:

20 First, the defendant knowingly and willfully provided a thing of value to another person,

21 Second, the thing of value was provided for the purpose of causing the other person to make
22 campaign contribution in the other person's name; and

23 Third, the campaign contribution was made to a candidate or candidate's authorized political
24 committees with respect to an election for federal office being sought by the candidate.

25 The defendant fully understands the nature and elements of the crimes charged in the information
26 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
27 his attorney.

V. MAXIMUM SENTENCE

A. Maximum Penalty.

The maximum sentence that the Court can impose on Count One is five years of incarceration, a fine of \$250,000, a three year period of supervised release and a special assessment of \$100.

The maximum sentence that the Court can impose on Count Two is five years of incarceration, a three year period of supervised release and a special assessment of \$100. If a fine is imposed under Count Two, it shall be in an amount of not less than 300 percent of the amount involved in the violation, and not more than the greater of either \$50,000 or 1,000 percent of the amount involved in the violation (52 U.S.C. 30109(d)(1)(D)(ii)). The Court is required to impose either a sentence of incarceration or a fine, or both under Count Two. With respect to any fine the Court may impose under Count Two, the parties agree that the amount involved in the violation for the purpose of calculating that fine is \$43,400.

B. Violations of Supervised Release.

The defendant understands that if he violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require the defendant to serve up to two additional years of imprisonment.

VI. SENTENCING DETERMINATION

A. Statutory Authority.

The defendant understands that the Court must consult the Federal Sentencing Guidelines and must take them into account when determining a final sentence. The defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines and must take them into account when determining a final sentence. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. The defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

1 **B. Stipulations Affecting Guideline Calculation.**

2 The government and the defendant agree that there is no material dispute as to the following.
3 sentencing guidelines variables and therefore stipulate to the following:

- 4 1. Base Offense Level: 8 (§ 2C1.8(a))
5 2. Amount of Illegal Transactions: +12 (§§ 2C1.8(b)(1); 2B1.1(b)(1)(G))
6 3. Number of Illegal Transactions: +2 (§ 2C1.8(b)(4))
7 4. Role in the Offense Adjustment: +4 (§ 3B1.1(a))
8 5. Acceptance of Responsibility: See paragraph III.A.2 above

9 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
10 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence but
11 hereby agrees not to recommend a sentence in excess of thirty (30) months incarceration.

12 **VII. WAIVERS**

13 **A. Waiver of Constitutional Rights.**

14 The defendant understands that by pleading guilty he is waiving the following constitutional
15 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
16 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
17 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
18 compelled to incriminate himself.

19 **B. Waiver of Appeal and Collateral Attack.**

20 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
21 conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to
22 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
23 exceed the statutory maximum for the offenses to which he is pleading guilty.

24 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
25 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
26 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
27 understands that these circumstances occur infrequently and that in almost all cases this Agreement
28 constitutes a complete waiver of all appellate rights.

1 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
2 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
3 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

4 If the defendant ever attempts to vacate his pleas, dismiss the underlying charges, or modify or
5 set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the
6 rights set forth in Section II.D herein.

7 C. Waiver of Attorneys' Fees and Costs.

8 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
9 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
10 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
11 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
12 charges previously dismissed).

13 VIII. ENTIRE PLEA AGREEMENT


14 Other than this plea agreement, no agreement, understanding, promise, or condition between the
15 government and the defendant exists, nor will such agreement, understanding, promise, or condition
16 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
17 counsel for the United States.

18 IX. APPROVALS AND SIGNATURES

19 A. Defense Counsel.

20 I have read this plea agreement and have discussed it fully with my client. The plea agreement
21 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
22 plead guilty as set forth in this plea agreement.

23 Dated: 5/2/16

24 
EDWARD J. LOYD, JR.
Attorney for Defendant

25
26 B. Defendant:

27 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
28 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully

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1 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
2 case. No other promises or inducements have been made to me, other than those contained in this plea
3 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
4 Finally, I am satisfied with the representation of my attorney in this case.

5
6
7 Dated: May 2, 2016


BABULAL BERA
Defendant

8
9
10 C. Attorneys for United States:

11 I accept and agree to this plea agreement on behalf of the government.

12 Dated: May 10, 2016

BENJAMIN B. WAGNER
United States Attorney

13
14 
JOHN K. VINCENT
Assistant United States Attorney

15
16
17 Dated:

RAYMOND N. HUSLER
Chief, Public Integrity Section

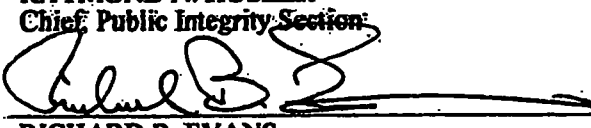
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19 
RICHARD B. EVANS
Trial Attorney
United States Department of Justice
Public Integrity Section
1400 New York Ave. NW, Suite 12100
Washington, DC 20005

EXHIBIT "A"
Factual Basis for Pleas

The parties agree that the following is true and that if this matter were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt.

In 2010 and 2012 the defendant's son was a candidate for a seat in the United States Congress representing District 3 (2010) and District 7 (2012) from the State of California. With respect to both elections, the candidate's official federal campaign committee ("committee") was headquartered in Elk Grove, California, within the Eastern District of California. With respect to both elections, the defendant made the maximum allowable individual contributions to his son's campaign. Also with respect to both elections, the defendant recruited, solicited, and utilized friends, family members and acquaintances to make financial contributions to his son's campaign, which the defendant then reimbursed to these contributors with his own funds. The defendant did this to make contributions to his son's campaign in excess of the contribution limits established by federal law. With respect to the 2010 and 2012 elections, the government has identified over 130 improper campaign contributions involving approximately 90 contributors.

On or about April 4, 2009, and May 4, 2009, defendant and his spouse each made contributions totaling \$4,800 to the committee, thereby reaching their individual contribution limits allowed by the Election Act to the committee for the 2010 election. With respect to the 2010 election, the defendant directly and indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal campaign contributions, with the understanding that he would reimburse them in whole or in part. From approximately May 11, 2009, through at least August 20, 2010, these individuals contributed a total of at approximately \$225,326 to the committee. These individuals received full or partial reimbursements for their contributions from the defendant in an amount totaling over \$220,000.

On or about January 5, 2011, defendant and his spouse each contributed \$5,000 to the committee thereby reaching their individual contribution limits allowed by the Election Act to the committee for the 2012 election. With respect to the 2012 election, the defendant again directly and indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal campaign contributions, with the understanding that he would reimburse them in whole or in part. From at least January 31, 2011, and continuing through at least December 5, 2011, these individuals contributed a total of approximately \$43,400 to the committee. These individuals received full reimbursement for their contributions in the form of funds that originated from the defendant. These were delivered to the individuals either by the defendant directly or through third parties working at the defendant's behest.

As an example, in 2009, Person 1 received a telephone call from the defendant who asked Person 1 to contribute to the campaign. Person 1 explained that while he wanted to contribute, he and his wife could not afford to do so. The defendant told Person 1 that the defendant would give him the money to contribute, and that Person 1 should contribute the maximum amount allowable. On May 15, 2009, the defendant arranged for a check in the amount of \$4,700 to be made out to Person 1. The check was drawn on one of the defendant's personal accounts. On May 17, 2009, the defendant signed a check made out to Person 1 in the amount of \$4,200. This check was drawn on a different personal account. Person 1 received these checks in the mail, and he subsequently mailed contribution checks to the campaign's headquarters in Elk Grove, California. On June 1, 2009, Person 1 wrote out two checks to the official federal campaign committee for the defendant's son. Both of these checks were in the amount of \$4,800, and one was signed by Person 1 and one was signed by Person 1's wife.

Similarly, in 2011 Person 1 again contributed to the campaign, and again was reimbursed by the defendant. On August 14, 2011, the defendant signed a check made out to Person 1 in the amount of \$4,000. On August 15, 2011, the defendant signed a check made out to Person 1 in the amount of \$5,600. Both of these checks were drawn on one of the defendant's business accounts. Person 1 received these checks in the mail, and he subsequently mailed contribution checks to the campaign's headquarters in Elk Grove, California. On August 25, 2011, Person 1 wrote out two checks to the

PLEA AGREEMENT

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1 official federal campaign committee for the defendant's son. Both of these checks were in the amount
2 of \$4,800, and one was signed by Person 1, and one was signed by Person 1's wife. On October 14,
3 2011, the official federal campaign committee filed a quarterly contribution report with the Federal
4 Election Committee, as required by law. That report listed the two contributions received from Person 1
5 and his wife, and identified Person 1 and his wife as the contributors.

[Handwritten signature]
5/10/16